



U.S. Department of Justice

Environment and Natural Resources Division

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Nancy Flickinger  
Senior Attorney  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044  
[nancy.flickinger@usdoj.gov](mailto:nancy.flickinger@usdoj.gov)

Telephone (202) 514-5258  
Facsimile (202) 353-0296  
Facsimile (202) 514-0097

July 23, 2012

David Evans  
McGuire Woods LLP  
One James Center  
901 East Cary street  
Richmond, VA 23219  
[devans@mcguirewoods.com](mailto:devans@mcguirewoods.com)

George Hawkins  
General Manager  
DC Water and Sewer Authority  
5000 Overlook Avenue, SW  
Washington, DC 20032  
[George.hawkins@dcwater.com](mailto:George.hawkins@dcwater.com)

Re: DC Water's Proposed Green Infrastructure Plan and the 2005 Consent Decree

Dear David and George:

Thanks very much for your June 8, 2012 meeting and presentation with officials, managers and attorneys from EPA Headquarters and EPA Region 3, as well as with myself and Ben Fisherow from the Department of Justice Environment Division. Your presentation regarding DC Water's plans to evaluate and potentially to integrate additional green infrastructure into the Potomac and Piney Branch components of the Long Term Control Plan ("LTCP") was very informative and persuasive. I understand that the plan going forward is to work with EPA to develop a written agreement outlining the agencies' plan to work together on this issue into the future.

Part of this program may require an extension of some of the existing Consent Decree deadlines, so I did want to remind both of you of the procedural and substantive requirements to amending the 2005 LTCP Consent Decree. As you know, the judge assigned to this matter ultimately has to approve any modification to the CSO Controls and schedule set forth in the 2005 Consent Decree. The 2005 Consent Decree sets forth specific procedures and requirements for DC Water to seek a modification and for presentation of that modification to EPA. See, 2005 Consent Decree, Section XXII, Paragraph 101. Ultimately appropriate officials on behalf of the

United States have to approve the proposed amendment to the 2005 Consent Decree before lodging it with the Court for a period of public comment. In other words, only after it is approved here at DOJ at appropriate levels can it be presented to the court for public comment.

Again, we agree with EPA that DC Water has presented a very thoughtful program for evaluation of green infrastructure and for increased incorporation of GI into the local CSO controls. We look forward to further progress on this issue, but did want to clarify some of the limitations involved in the proposed technical and other meetings, as well as the legal requirements for modifying the consent decree.

Sincerely,

  
Nancy Flickinger

cc: Yvette Roundtree



COUNCIL OF THE DISTRICT OF COLUMBIA  
1350 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004

Phil Mendelson  
Chairman

July 20, 2012

Office: (202) 724-8064  
Fax: (202) 724-8099

RECEIVED

JUL 27 2012

The Honorable Lisa P. Jackson, Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

RE: DC Water's Proposal EPA REGION III  
OFFICE OF REGIONAL ADMINISTRATOR

Dear Administrator Jackson:

I write regarding an April 17, 2012 letter I co-signed with other members of the Council of the District of Columbia "express[ing] our enthusiastic support for an alternative green infrastructure approach to the District's Long Term Control Plan (LTCP) as proposed to your agency by DC Water." I withdraw my support for that approach.

I do believe that the District government, together with its independent water utility DC Water, must do much more to promote low impact development (LID) and other green infrastructure projects as a means of reducing combined sewer overflows from the District's sewer system into the District's waters. I enthusiastically support any efforts in that regard, and believe DC Water is correct in seeking to put emphasis on green infrastructure projects.

At this time, however, the benefits that will accrue from green infrastructure projects are speculative as to their magnitude

DC Water has had since the 2005 consent decree (and before) to pursue LID projects and has little to show. Nor is there data to prove that the benefits will offset abandonment (or 8-year postponement) of the LTCP tunnels. Meanwhile, the District's waters remain polluted and the Chesapeake Bay TMDLs require that all pollution control measures needed to fully restore the Bay and its tidal rivers be in place by 2025, with at least 60 percent of the actions completed by 2017.

DC Water should deploy green infrastructure projects simultaneous with, and in addition to, proceeding with the tunnels required under the LTCP. The tunnel project will take years to complete, and if, in the next few years, the data from LID implementation demonstrate that the tunnels are unnecessary then that project can be aborted and considerable savings achieved. But revising the consent decree now, causes delay and therefore risks the environment. If the data from LID implementation demonstrates that the tunnels are necessary, then the delay that DC Water seeks will have had the effect of deferring and increasing the total cost of stopping sewer overflows.

The green infrastructure approach sought by DC Water as an alternative to the consent decree is not the best course at this time.

Sincerely,

  
Phil Mendelson

cc: Shawn M. Garvin, Regional Administrator



